

REMARKS

Claims 5 to 8 are pending in the application.

Rejection under 35 U.S.C. 103

Claims 5-8 stand rejected under 35 U.S.C. 103a) as being unpatentable over *Wedi et al.* (US 6,398,412) and *Wedi* (US 2003/0210837).

The examiner argues that US 6,398,412 teaches a gusseted bag with gussets 7 between front wall 4 and rear wall 5 of the bag. The bag walls are fused with the gussets and in the top area the bag is free of gussets and the bag walls are fused with one another. The gussets have top edges that are folded over toward one of the bag walls at folding line 19 oriented toward the bottom of the bag and the folded over areas are fused to the gussets. The examiner states that US 6,398,412 does not disclose the folded-over end areas with inner side areally fused to the neighboring bag wall. But according to the examiner, US 2003/0210837 discloses that the gussets 3 are fused along area 10a to wall 5. Therefore, it would have been obvious to modify US 6,398,412 by US 2003/0210837 in that the folded over area is fused to front or rear wall.

Claim 1 has been amended to define the welding seams better. The folded-over end areas each have an inner side where the inner layer of the multi-layer film is folded on itself and fused to itself by a first welding seam. The folded-over end areas each have an outer side where the inner layer of the multi-layer film is facing a neighboring bag wall and is areally fused by a second welding seam to said neighboring bag wall, respectively. An area of a gusset half neighboring the folded-over end areas, respectively, is areally fused with the inner layer of the multi-layer film facing said neighboring bag wall by a third welding seam to said neighboring bag wall, respectively. The first, second, and third welding seams form a fused connection that includes the top edges so that the top edges are closed.

The present invention concerns a bag comprised of a multi-layer film that has an inner layer, wherein only the inner layer is fusible; see page 2, lines 8 to 13. The fact that only the inner layer of the film (i.e., the layer that is facing the interior of the bag) is fusible has implications in regard to sealing the bag.

When the bag of US 6,398,412 is sealed as shown in Fig. 1 by means of the folded-over triangular sections 17, the "two layers of the folded end region 17 are solidly welded to one another by a welding seam that runs along the upper cutting edges of the side

gusset halves 13, 14" (col. 3, lines 52-56) and the bag is seal-tightly closed as the material of the bag is fusible.

However, when a multi-layer material is used and only the inner layer is fusible as in the present invention, a complete sealing action cannot be achieved in the way described by *US 6, 398,412* for the following reasons. Attached is a schematic showing the situation with regard to fusible inner layer (a) and non-fusible outer layer (b). Exhibit A illustrates the two sides (or gusset halves) G1 and G2 of the gusset resting against one another. Each side is comprised of a multilayer material and the inner layer (a) facing the interior of the bag is fusible while the outer layer (b) facing the exterior of the bag is non-fusible. When the gusset is folded as shown by the triangle 17 of *US 6, 398,412*, the situation as shown in Exhibit B results. The side of the triangle 17 that is folded back onto the gusset side G2 (area A) is fusible as the gusset has inner layers (a) at this location. But the outer non-fusible layers (b) contact one another in the area B of the folded-over triangle 17 so that at this location no seal is formed. The triangle 17 therefore has an unsealed part where within the folded-over triangle the outer layers (b) are simply resting on one another without being connected or fused. This means that one can still insert a finger, for example, at the location 18 (Fig. 2 of *US 6,398,412*) and reach the exterior from the interior of the bag.

This result is also illustrated schematically in the instant application in Fig. 2 and Fig. 4, where between the parallel extending elements of the gusset 4 no seal (no cross-hatching) is shown.

This is unacceptable in case of bags for material that must be flavor-tightly sealed or in case of a liquid where the liquid could pass through the unsealed area causing leakage from the bag.

The present invention has solved this problem by providing additional seals 15 and 16, seal 15 sealing relative to the front wall and seal 16 sealing the lower end of the open folded over area of the gusset. This is shown particularly well in Fig. 2 and Fig. 4 as well as Fig. 5. As set forth on page 3, lines 16-19, of the instant specification, the seal comprised of the welding seam 14, the welding seam 15 and the sealed area 16 closes off the lateral folds (gussets) 3 and 4 absolutely tightly without requiring an additional seal at the top edges of the gussets.

The secondary reference employed by the examiner relates to a different concept of sealing a bag. The gussets in *US2003/0210837* extend into the area of the reclosable closure means and are positioned flat and not folded between the front wall or rear wall and the connecting flap of the reclosable closure device. The upper end of the gussets are thus sealed with the front wall or rear wall and the connecting flap. The fusible material of the connecting flap and of the front or rear wall embed the ends of the gussets in the fusible material so that one side of the gusset is connected to the front or rear wall and the other side of the gusset is connected to the connecting flap.

The problem of sealing a folded-over portion of a gusset having non-fusible layers resting on one another is not present. The second and third sealing seams as set forth in claim 5, i.e., a seal between the outer side of the folded-over end areas where the inner layer of the multi-layer film is facing a neighboring bag wall and is areally fused to the neighboring bag wall and the area of a gusset half neighboring the folded-over end areas, respectively, fused with the inner layer of the multi-layer film facing the neighboring bag wall are not disclosed.

If a multi-layer material where only the inner layer is fusible were used in *US 2003/0210837*, the following problem would result: when extending the gussets to the sealing area and sealing all areas with one another, a seal-tight bag would result but the non-fusible layers would not be fixed relative to one another and that would cause the gussets to spread apart. This would impair handling and also is detrimental to the appearance of the bag and general acceptance by customers.

The special features in regard to shortening the gussets in the area of the top seal (Fig. 1 of *US2003/0210837*) or cutouts (Fig. 3) concern a problem that is not relevant to the instant application as the instant bag has gussets that do not extend all the way to the top seal. The instant bag is of a compact design and has no disruptive extensions.

Claims 5 and its dependent claims are therefore not obvious in view of the cited references.

Reconsideration and withdrawal of the rejection of the claims under 35 USC are therefore respectfully requested.

CONCLUSION

In view of the foregoing, it is submitted that this application is now in condition for allowance and such allowance is respectfully solicited.

Should the Examiner have any further objections or suggestions, the undersigned would appreciate a phone call or **e-mail** from the examiner to discuss appropriate amendments to place the application into condition for allowance.

Authorization is herewith given to charge any fees or any shortages in any fees required during prosecution of this application and not paid by other means to Patent and Trademark Office deposit account 50-1199.

Respectfully submitted on May 25, 2009,

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Exhibit A and B